

SENATE FINANCE COMMITTEE

May 12, 2016

10:04 a.m.

[10:04:54 AM](#)

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 10:04 a.m.

MEMBERS PRESENT

Senator Anna MacKinnon, Co-Chair
Senator Peter Micciche, Vice-Chair
Senator Click Bishop
Senator Mike Dunleavy
Senator Donny Olson

MEMBERS ABSENT

Senator Pete Kelly, Co-Chair
Senator Lyman Hoffman

ALSO PRESENT

Pat Pitney, Director, Office of Management and Budget, Office of the Governor; Mike Vigue, Director, Program Development, Department of Transportation and Public Facilities.

SUMMARY

SB 138 BUDGET: CAPITAL

CSSB 138(FIN) was REPORTED out of committee with a "do pass" recommendation.

#sb138

SENATE BILL NO. 138

"An Act making appropriations, including capital appropriations, reappropriations, and other appropriations; making appropriations to capitalize funds; and providing for an effective date."

[10:05:36 AM](#)

Co-Chair MacKinnon commented that the committee would hear two amendments for consideration.

Senator Olson MOVED to ADOPT Amendment 1:

OFFERED IN THE SENATE

TO: CSSB 138(FIN), Draft Version "P"

Page 3, line 22:

Delete "17,997,268" in both places.

Insert "25,235,690" in both places.

Page 3, following line 25:

Insert new material to read:

"ALLOCATIONS

Kivalina K-12 7,238,422

Replacement School -

Kasayulie (HD 40)"

Adjust fund sources and totals accordingly.

Co-Chair MacKinnon OBJECTED for discussion.

Senator Olson presented Amendment 1, on behalf of one of the educational institutions in his district. He commented on the three branches of government. The amendment contained what he referred to as a court-ordered capital item. He referred to the Kasayulie vs. State of Alaska lawsuit [filed by a couple from Akiachak who claimed the state's method of financing school construction discriminated against rural students]; and specified that although the legislature was not part of the lawsuit, it was the appropriating body for the state. He emphasized that if the situation was not remedied, over time the issue of a school for Kivalina would become increasingly expensive and difficult to address. He plead with the committee to pass the amendment and address the issue.

[10:07:40 AM](#)

Senator Bishop asked about the timeline for the school site selection.

Senator Olson thought that there had not been a finalized site selected for the Kivalina School. He thought if the amendment was passed, the committee could put in provisions

with safeguards for the state in the case that the school was not built.

Vice-Chair Micciche stated that the previous year he had been uncomfortable with the amount that the committee had appropriated for the school, but in recognition of the lawsuit he was convinced at the course of action taken. He thought adding more funds without a final plan made him less comfortable in light of the \$4.1 billion budget deficit. He was more comfortable waiting to see a final plan before moving forward with additional funding.

[10:08:59 AM](#)

Co-Chair MacKinnon spoke in opposition to Amendment 1. She recounted working diligently with Senator Olson the previous year to provide \$43,337,400 for the Kivalina school project; an amount which she considered to have extinguished the lawsuit requirements. She furthered that the committee could have approached the funding with small allocations of \$5 million at a time until there was sufficient funds. She considered that without a plan, there was already enough funding that was pigeon-holed for the project. She revealed that the project began as a renovation project; and the community and the state together had decided that erosion was happening in the area and the administration of former Governor Sean Parnell had entered into a replacement project, which she believed increased the state's liability. She added that some in the legislature did not believe it had increased the state's liability, but felt that the state should be looking at a replacement school. She emphasized that for the previous 10 years of arguing over the issue, the children of Kivalina had been in conditions that they should not be. She thought that any future legislature could add funding to the amount available once a plan was in place. Until that time, she did not think it was prudent to allocate additional funds to the project.

[10:10:46 AM](#)

Senator Olson clarified that there had been a site selected for the school, and there was need for an environmental impact statement (EIS) in order to get the funding for the road to the school.

Co-Chair MacKinnon MAINTAINED her OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Olson

OPPOSED: Bishop, Dunleavy, Micciche, MacKinnon

The MOTION FAILED (4/1).

[10:11:50 AM](#)

Co-Chair MacKinnon MOVED to ADOPT Amendment 2:

OFFERED IN THE SENATE

BY SENATOR MACKINNON

TO: CSSB 138(FIN), Draft Version "P"

Page 33, before line 1:

Insert a new bill section to read:

"* Sec. 10.

LEGISLATIVE INTENT RELATING TO FUNDING FOR KIVALINA SCHOOL. The legislature intends that the amount appropriated by sec. 1, ch. 38, SLA 2015, page 3, lines 23 - 26, for construction of a Kivalina K-12 replacement school satisfies the state's obligation under the consent decree entered into in Kasayulie v. State, 3AN-97-3782 CIV (Sept. 1, 1999). No funding for the construction or renovation of a Kivalina K-12 school is appropriated in this Act. It is the intent of the legislature that the Northwest Arctic Borough School District expedite the completion of a plan to replace the existing Kivalina K-12 school to allow for the construction of adequate school facilities for the students of Kivalina."

Renumber the following bill sections accordingly.

Page 49, lines 17 - 18:

Delete "secs. 13(2), 14, 16(b), 17, 19, 21, 23, 24, 25(d), 25(e), and 28"

Insert "secs. 14(2), 15, 17(b), 18, 20, 22, 24, 25, 26(d), 26(e), and 29"

Page 49, line 19:

Delete "secs. 13(1), 25(a) - (c), 29, and 30"

Insert "secs. 14(1), 26(a) - (c), 30, and 31"

Page 49, line 23:

Delete "Section 11"
Insert "Section 12"

Page 49, lines 24 - 25:

Delete "secs. 15, 16(b), 17(a), 19, 20, 22, 23, 24(a), 24(b), 24(c), 25(a), 25(d), 25(e), and 26 - 29"
Insert "secs. 16, 17(b), 18(a), 20, 21, 23, 24, 25(a), 25(b), 25(c), 26(a), 26(d), 26(e), and 27 - 30"

Page 49, lines 25 - 26:

Delete "secs. 15, 16(b), 17(a), 19, 20, 22, 23, 24(a), 24(b), 24(c), 25(a), 25(d), 25(e), and 26 - 29"
Insert "secs. 16, 17(b), 18(a), 20, 21, 23, 24, 25(a), 25(b), 25(c), 26(a), 26(d), 26(e), and 27 - 30"

Page 49, line 27:

Delete "sec. 17(b)"
Insert "sec. 18(b)"

Page 49, line 31:

Delete "sec. 21"
Insert "sec. 22"

Page 50, line 3:

Delete "sec. 24(d)"
Insert "sec. 25(d)"

Page 50, line 6:

Delete "10, 11, and 32"
Insert "11, 12, and 33"

Page 50, lines 8 - 9:

Delete "Sections 15, 16(b), 17(a), 19, 20, 22, 23, 24(a), 24(b), 24(c), 25(a), 25(d), 25(e), and 26 - 29"
Insert "Sections 16, 17(b), 18(a), 20, 21, 23, 24, 25(a), 25(b), 25(c), 26(a), 26(d), 26(e), and 27 - 30"

Page 50, line 10:

Delete "secs. 34 and 35"
Insert "secs. 35 and 36"

Senator Dunleavy OBJECTED for discussion.

Co-Chair MacKinnon commented that she offered the amendment in respect for the children of Kivalina, and for Senator Olson. She thought the children of Kivalina had been disadvantaged for many years, and stated that the legislature had appropriated a substantial sum of money that resolved the lawsuit regarding the school. She furthered that the prior appropriations did not resolve the state's obligation to the children. She pondered that any future legislature could act independently (of the current actions). She clarified that the amendment restated that the state had complied with the court order, and met the obligations to the lawsuit.

[10:12:56 AM](#)

AT EASE

[10:16:12 AM](#)

RECONVENED

Co-Chair MacKinnon noted that Senator Dunleavy had objected to Amendment 2.

Senator Olson thought the amendment declared that the state had satisfied its obligation to the consent decree, and he wholeheartedly disagreed.

Senator Dunleavy WITHDREW his OBJECTION.

Senator Olson OBJECTED to Amendment 2.

Co-Chair MacKinnon read from the language portion of Amendment 2 [see above].

[10:17:59 AM](#)

Senator Olson asked if it was possible to have the administration comment on the amendment.

PAT PITNEY, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF THE GOVERNOR, spoke to Amendment 2, stating that the administration believed that an additional \$7 million towards the school construction, above what had already been appropriated, was necessary to meet the commitment of the settlement.

Co-Chair MacKinnon asked about the \$43 million the legislature had appropriated the previous year, and where it resided.

Ms. Pitney informed that the funds were in the general fund (GF) until the project would start.

Co-Chair MacKinnon asked if there was a plan for the school construction project.

Ms. Pitney believed there was a plan, but not sufficient funding to start the project.

[10:19:44 AM](#)

Co-Chair MacKinnon asked if there was a plan for a design for the school.

Ms. Pitney thought that there was a site concept for the school construction, and the district was waiting for the necessary funding as well as a community agreement.

Co-Chair MacKinnon wondered if the school was being designed to conform to the amount of funding, or whether a funding amount would be requested to fully fund a specific design.

Ms. Pitney thought there were two separate issues: the legal issue, and the school construction issue. She thought the funding request that the administration made satisfied the legal settlement issue.

Co-Chair MacKinnon asked if Ms. Pitney had read the settlement decree.

Ms. Pitney had not read the decree in its entirety, but had consulted with the Department of Law (DOL) and read its briefs on the matter.

Co-Chair MacKinnon asked if Ms. Pitney had been told via the briefs or the decree that the legislature could allocate money on multiple occasions versus one occasion.

Ms. Pitney stated that it was very possible to allocate money on multiple occasions, and the settlement required additional funds (based on DOL's analysis). The

administration had put forward the appropriation to meet the requirement.

Co-Chair MacKinnon posited that the decree stipulated that the legislature was required to use the number that the Department of Education and Early Development had on the books (\$43,237,400), which was the amount that the legislature had appropriated.

Ms. Pitney did not have the materials in her possession to confirm Co-Chair MacKinnon's statement.

10:22:06 AM

Vice-Chair Micciche reported that there had been a specific funding amount that had convinced him to support the appropriation the previous year. He echoed Ms. Pitney's assertion that there were two distinct issues. Considering the fiscal challenges in the current year, he was comfortable waiting for further development of a plan. He qualified that if he saw a plan to deliver equitable education services to the students of Kivalina he would be more likely to support additional expenditures. He mentioned that he considered the funding to be sequestered.

Co-Chair MacKinnon thought that it might require a representative from DOL to argue Senator Olson's position on the amendment. She understood that the parties involved in the lawsuit had until July 1, 2015 to reopen the lawsuit if the allocation did not satisfy the consent decree. She emphasized to Senator Olson that she wanted to make sure that all Alaskans were treated fairly, and reiterated that she had worked closely with him the previous year. She stated that funds had been set aside, and restated that future legislatures could do what they believed was in the best interest of the school.

Senator Olson asked what kind of difficulties Ms. Pitney anticipated considering the lack of the additional \$7 million. He asked her to consider the diminishing amount of money in the Constitutional Budget Reserve and increasingly severe budget crisis.

Ms. Pitney believed (specific to the \$7 million) that the highest risk the state faced was a lawsuit and a reopening of all of the rural school funding inequality issues.

Senator Olson thought the lawyers and the lobbyists would be the only winners in the situation if it was not resolved.

[10:25:18 AM](#)

Vice-Chair Micciche recalled that the higher settlement amount was a choice by the state, and thought that the actual settlement number was much lower.

Senator Dunleavy thought the Kivalina school was a complicated issue, and mentioned site selection and island erosion. He recounted that the original approach to the issue was to renovate the existing building for approximately \$17 million. He stated that there had been extensive research and discussion on the matter the previous year, and remembered language in the lawsuit suggesting that the state would not need to fund beyond \$17 million to settle the lawsuit. He discussed access to the school construction site and was unsure if the design had been completed. He thought the state had time to do the right thing for Kivalina. He discussed the propensity for burgeoning costs on projects such as the Kivalina school, and thought people would be coming back to the state requesting additional funds to complete the project.

Vice-Chair Micciche thought the legislature may have put itself in a position of having an open door to spending on the school by moving beyond the original settlement. He wondered whether DOL would share its evaluation of the case and how they arrived at the amount of \$50 million to settle the case.

Senator Bishop did not see an avenue for another lawsuit. He wondered if \$7 million in additional funding was an accurate number, and did not think the funding had to be completed immediately. He was fully in support of doing what was right for Kivalina, after seeing a finalized plan. He mentioned the open and active EIS, and cautioned that there would be wetlands disturbance with unknown costs for mitigation.

[10:28:37 AM](#)

Senator Olson mentioned satisfying the consent decree, after which it would be a legislative issue.

Co-Chair MacKinnon commented that anyone could bring a lawsuit against the state, and pointed out that the lawsuit had expired. She recounted that the state had met its obligation, and could have provided incremental funding to satisfy the lawsuit.

Senator Olson MAINTAINED his OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Bishop, Dunleavy, Micciche, MacKinnon
OPPOSED: Olson

The MOTION PASSED (4/1). Amendment 2 was ADOPTED.

10:30:06 AM

Co-Chair MacKinnon highlighted a request for \$7 million for airport erosion on page 10, line 7 of the bill. She asked a department representative to speak to the committee about why it should include \$7 million for an airport if they were considering relocating a school.

MIKE VIGUE, DIRECTOR, PROGRAM DEVELOPMENT, DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, relayed that the airport erosion control project was intended to provide permanent repairs for what happened in a 2005 West Coast storm. He furthered that whenever there was a storm in that area of the state, there were erosion problems at the airport runway. The project was listed in the Airport Improvement Program (AIP) for 2017 for \$7 million in federal authority to accept and spend Federal Aviation Administration (FAA) funds.

Co-Chair MacKinnon asked Mr. Vigue to discuss safety standards, and how it might affect Kivalina transportation if the funds were not appropriated.

Mr. Vigue did not feel it was his area of expertise to discuss runway safety issues. He stated that the information would need to come from one of the aviation professionals in the department.

Co-Chair MacKinnon asked if Senator Olson would like to defend the \$7 million request for Kivalina's airport.

Senator Olson asked Mr. Vigue what kind of additional federal funds would be in jeopardy if the \$7 million request was withdrawn from the capital budget.

Mr. Vigue stated that the funding was listed in the current plan approved by the FAA, and it was FAA funding that would be coming to the project. If the project did not move forward, the \$7 million would be used by another airport project in the state. He furthered that the funds were specific to FAA grants.

Senator Olson asked if there was a specific amount of federal funding that would be jeopardized if the \$7 million was not included in the capital budget.

Mr. Vigue stated that the state would not lose \$7 million; rather, the FAA funds would go to another project listed in the AIP.

Senator Olson asked if there was a way that the monies could be used to fund the request that had been in Amendment 1 offered earlier in the meeting.

Mr. Vigue stated that what Senator Olson suggested was not possible, as the funds were FAA funds and had to be used on airport improvement projects.

Senator Olson asked if the terms of use (for the FAA funds) included roads to the airport.

Mr. Vigue stated that roads that went to the airport were an eligible expense, as long as the road was part of a grant approved by FAA.

[10:34:31 AM](#)

Senator Olson commented that having been to Northwest Alaska the previous day, he had observed that the ground was frozen and there was no significant erosion able to occur until storm season. He understood that the state airport in Kivalina was compromised by not having the proper size runway for commercial air taxi operators, which were the only link out of Kivalina when travel across the water by snow machine was restricted by weather. He mentioned the reliance upon helicopters as the only means of transport. He wondered if what he had described was a valid concern.

Mr. Vigue believed Senator Olson described a valid concern, but reiterated that he did not have expertise in runway safety. He thought the fact that the FAA had approved the grant and the fact that the road was included in the AIP indicated that the road work was for permanent erosion control measures, and assumed it was important.

Senator Olson asked if Mr. Vigue was aware of any accidents that had happened in the recent past in Kivalina because of the inadequacy of the airport.

Mr. Vigue answered in the negative.

Senator Olson referred to an aircraft that had been caught in a strong crosswind and had lain next to the airport for multiple years.

[10:36:38 AM](#)

Senator Dunleavy asked for confirmation that the \$7 million was all federal funds.

Mr. Vigue answered in the affirmative.

Senator Dunleavy thought the issue was moot, since the funds were not UGF, but rather federal receipts.

Co-Chair MacKinnon noted that the entire village of Kivalina benefitted from the airport for moving transportation goods in and out of the area in a safe manner. She commented that the state did not have a village relocation happening, however there was a relevant conversation around the school site selection. She thought that it was a valid conversation for the consideration of the committee, but clarified that the \$7 million being discussed was allowing DOT to allocate safety funds to airport runways that were not complying with federal aviation guidelines. She acknowledged that Senator Olson was a pilot.

Senator Olson commented that when operating as an air taxi operator, the airport concerns were valid. He mentioned insurance concerns and the seriousness of accidents.

Senator Bishop thought he may have misunderstood, but wondered if (hypothetically) AIP funds could be used to

connect a road to the airport from the school in the future.

Mr. Vigue clarified that FAA funds were eligible for roads that provide access to the airport.

10:39:06 AM

Vice-Chair Micciche moved to report CSSB 138(FIN) out of committee as amended and with necessary technical and conforming changes.

CSSB 138(FIN) was REPORTED out of committee with a "do pass" recommendation.

10:40:03 AM

AT EASE

10:41:16 AM

RECONVENED

#

ADJOURNMENT

10:41:27 AM

The meeting was adjourned at 10:41 a.m.